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Federal Communications Commission

DA 98-2567

FCC MAIL ROOM

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Forward-Looking Mechanism)	
for High Cost Support for)	CC Docket No. 97-160 ✓
Non-Rural LECs)	

ORDER

Adopted: December 17, 1998

Released: December 17, 1998

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On November 30, 1998, GTE Service Corporation (GTE) filed a pleading styled "Emergency Motion for Disclosure of Data and Information to Permit Public Review and Extension of Time" (Motion), as well as a Freedom of Information Act (FOIA) Request seeking a similar list of documentation.¹ In both filings, GTE claims that "critical components of the Model platform [adopted by the Commission in the *Platform Order*]² and the inputs thereto have not been made available to the interested public and are therefore insusceptible to evaluation."³ In the Motion, GTE also claims that the requested information is necessary for GTE to formulate its petition for reconsideration of the *Platform Order*.⁴

¹ The lists of information requested in the Motion and the FOIA Request are identical, except that the list in the FOIA Request contains two additional items, which are designated numbers 19 and 21 in the Motion, and a few of the requests in the Motion are slightly broader than the corresponding requests in the FOIA request. Compare FOIA Request at 2, request 6, with Motion at 6, request 6. For the sake of convenience, throughout this Order we will refer to the requests as numbered in the Motion.

² The model platform is the framework for an engineering and economic model that will be used to determine non-rural local exchange carriers' forward-looking cost of providing the set of services that are included within the definition of universal service. See generally *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Fifth Report & Order, CC Docket Nos. 96-45, 97-160, FCC 98-279 (rel. October 28, 1998) (*Platform Order*) at paras. 1-13.

³ FOIA Request at 1, Motion at 3 (emphasis omitted).

⁴ Motion at 3.

GTE requests that the date for filing petitions for reconsideration be extended to 20 days from the date on which the requested data and information is produced for public review.⁵

2. In this Order, we respond to the requests in GTE's two filings. For a number of the requests, we observe that the information sought by GTE is already available in the record of this proceeding.⁶ For other requests, we agree that the information should be disclosed, and describe the steps we have taken to do so. For the remaining requests, we conclude that the information is not subject to disclosure pursuant to FOIA or other requirements. In all cases where we decline to disclose requested information, the Commission did not rely on the information in reaching the decisions in the *Platform Order* and the information therefore is not necessary for GTE or other parties to formulate petitions for reconsideration of that order. Finally, we conclude that the Commission lacks authority to grant GTE's request for an extension of the deadline for filing petitions for reconsideration of the *Platform Order*, as this is a statutory deadline.⁷

II. MODEL PLATFORM AND INPUT VALUES

3. GTE requests a "complete and operational copy of the FCC's model platform," and specifically the same model version that the Commission staff is using.⁸ As noted in the *Platform Order*, the components of the synthesis platform that the Commission has selected all are and have been available in the public record.⁹ In addition, on August 7, 1998, the Commission made available via the World Wide Web a set of interface software to allow the

⁵ Motion at 8.

⁶ As we note below, in some cases the information was filed, and is only available for inspection and use, pursuant to the *Protective Order* in this proceeding. *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Protective Order, CC Docket Nos. 96-45, 97-160, DA 98-1490 (rel. July 27, 1998) (*Protective Order*).

⁷ In its Motion, GTE requests that, in light of the approaching deadline for filing of reconsideration petitions of the *Platform Order*, the Commission provide the information requested in the Motion immediately, but in no event later than seven calendar days. The Commission's rules generally allow the custodian of records at least twenty working days to respond to a request for a voluminous amount of separate and distinct records, as are sought in GTE's filings. 47 C.F.R. § 0.457(g). We also note that GTE's FOIA request and Motion were filed more than thirty days after the *Platform Order* was released.

⁸ Motion at 5, request 1.

⁹ *Platform Order* at para. 92. The specific model components selected in the *Platform Order* were drawn from the Hybrid Cost Proxy Model (HCPM), HAI Model, and the Benchmark Cost Proxy Model (BCPM). All three of these models have been available to all interested parties on the record throughout this proceeding.

selected model components to work together.¹⁰ Since that time, as Commission staff has made minor revisions to the HCPM portion of the model, it has updated the version available on the World Wide Web. Thus, GTE cannot realistically argue that the federal platform is not available to it for review because it already has access to the same model version that Commission staff are using. We do recognize that, although a number of outside parties have done so, some parties with relatively few resources may find it burdensome to assemble the separate components of the model platform for testing purposes. Therefore, for the convenience of interested parties and to facilitate review of the federal model, including possible input values, we intend in the very near future to make the complete federal model platform available on the World Wide Web in the form of a single piece of software. We anticipate that this will enable parties more easily to install and become familiar with the model platform the Commission has adopted.¹¹

4. GTE also requests a set of the input values to run the model.¹² As an initial matter, we observe that the Commission has not yet adopted the input values that ultimately will be used in the model platform.¹³ Thus, GTE's request for "disclosure" of input values fundamentally ignores the process that the Commission has established to allow itself, state commissions, the industry, and other interested parties to approach the models development and selection process in a systematic and manageable fashion. We also note that GTE seeks public disclosure of certain information that is available for use and inspection pursuant to *Protective Order* in this proceeding.¹⁴

5. In the *Further Notice of Proposed Rulemaking* on the models, issued shortly after the original *Universal Service Order*, the Commission established a schedule for approaching outstanding models issues that was intended to "encourage the public dialogue to progress in an orderly fashion" by establishing a "workplan" that would "allow all parties to consider critical issues at the same time" by focusing the attention of the Commission and all interested parties on particular aspects of the models at particular times.¹⁵ A principal

¹⁰ See *Common Carrier Bureau Seeks Comment on Model Platform Development*, Public Notice, CC Docket Nos. 96-45, 97-160, DA 98-1587 (rel. Aug. 7, 1998) (*Synthesis Platform Public Notice*).

¹¹ As described in Section VI below, the Commission has also established a detailed procedure to ensure that parties are informed of changes to the model and have access on the Commission's website to the most current version of the model.

¹² Motion at 5, request 1.

¹³ See *Platform Order* at paras. 11-12.

¹⁴ *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Protective Order, CC Docket Nos. 96-45, 97-160, DA 98-1490 (rel. July 27, 1998).

¹⁵ *Further Notice* at para. 5.

component of this organization of the issues was the division the Commission drew between "platform" issues -- which relate to the fixed assumptions, algorithms, and logic and other "moving parts" that determine the network structure that the model will consider in estimating costs -- and "inputs" issues -- which relate to values that an individual using the model can vary and on the basis of which the model platform generates cost estimates. An example of a platform issue is the choice of algorithms that the model uses to determine the size of a switch in a given central office; an example of an inputs issue is the price of a switch of a given size. We observe that GTE did not object to the Commission's decision to select the platform and inputs separately when the procedure was announced in July 1997.¹⁶

6. The Commission's decision to select the model platform before selecting input values was a reasonable approach to orderly administrative decisionmaking in this difficult and technical area, and does not affect GTE's or other parties' ability to understand or seek reconsideration of the *Platform Order*.¹⁷ Parties can readily evaluate the relative merit of the cost model platform components adopted by the Commission without knowing specific input values that will be used, including the specific customer location data set. In making its model platform selection, the Commission carefully considered the candidate platforms' engineering assumptions and the logic of their approaches to network design, and concluded that the combination of components that was selected will best generate accurate forward-looking cost estimates. This decision was not based on results obtained from running the model with any particular set of input values, but rather on assessments of the models' algorithms and logic. Just as the Commission was able to compare the model platform components on the record and select a platform based on an analysis of the candidate platforms' algorithms and internal logic, so too is GTE able to analyze the platforms' functioning to assess their relative merits. In sum, it is not necessary to know the specific input values that will be used in the model in order to select an accurate model platform to estimate the forward-looking costs of providing universal service.

7. The cases that GTE cites do not compel a different result.¹⁸ In each of the

¹⁶ *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45, 97-160, FCC 97-256 (rel. July 18, 1997) (*FNPRM*). In August 1998, the Common Carrier Bureau also described and sought comment on the most important aspects of the model platform that was ultimately adopted by the Commission. *Common Carrier Bureau Seeks Comment on Model Platform Development*, Public Notice, CC Docket Nos. 96-45, 97-160, DA 98-1587 (rel. Aug. 7, 1998).

¹⁷ Indeed, the precise form of many particular input values depends upon the specific platform algorithms adopted.

¹⁸ See *National Black Media Coalition v. F.C.C.*, 791 F.2d 1016, 1023 (2nd Cir. 1986), quoting *United States v. Nova Scotia Food Prods. Corp.*, 568 F.2d 240, 251 (2nd Cir. 1977); *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 393 (D.C.Cir. 1973), cert. denied, 417 U.S. 921 (1974).

cases cited by GTE, the agency failed to disclose data or information that the agency relied upon in reaching the decisions it made. Unlike this proceeding, for example, in *National Black Media Coalition*, the court concluded that a Commission order was arbitrary and capricious because the Commission used critical, yet unpublished, data to reach conclusions without public comment.¹⁹ In contrast, all material on which the Commission relied in selecting the federal model platform was identified in the *Platform Order* and was available to the public.

8. GTE also specifically asks that the Commission disclose the "inputs that the FCC Staff is using."²⁰ Because no final input values have yet been selected, the Commission staff is not currently using any single set of inputs exclusively. As explained above, staff is now moving forward under the Commission's workplan to recommend final input values for use with this platform. As part of this, Commission staff is making available on its World Wide Web site for discussion and comment purposes preliminary input values or ranges of values for most inputs, and is hosting public workshops.²¹ To the extent that Commission staff may on occasion use input values other than those that have been posted for evaluation purposes, these runs are part of the Commission's internal deliberative process that are exempt from disclosure under FOIA and the Commission's rules. Section 0.457 of the Commission's rules identifies records that are not routinely available for public inspection.²² Section 0.457(e), which implements Exemption 5 of FOIA,²³ provides that "[i]nteragency and intra-agency memorandums or letters and the work papers of members of the Commission or its staff will not be made available for public inspection, except in accordance with the procedures set forth in § 0.461."²⁴ Under this exemption, any communication or disclosure that would reveal the deliberative process of the Commission is exempt from mandatory

¹⁹ *National Black Media Coalition*, 791 F.2d at 1023.

²⁰ Motion at 5, request 1.

²¹ See *Common Carrier Bureau To Hold Three Workshops On Input Values To Be Used To Estimate Forward-Looking Economic Costs For Purposes of Universal Service Support*, Public Notice, CC Docket Nos. 96-45, 97-160, DA 98-2406 (rel. Nov. 25, 1998); *Common Carrier Bureau Announces The Location Of The December 11, 1998 Workshop On Input Values To Be Used To Estimate Forward-Looking Economic Costs For Purposes Of Universal Service Support*, CC Docket Nos. 96-45, 97-160, DA 98-2497 (rel. Dec. 4, 1998).

²² 47 C.F.R. § 0.457.

²³ 5 U.S.C. § 552(b)(5)

²⁴ 47 C.F.R. § 0.457(e). Section 0.461 of the Commission's rules details the procedures for requesting and inspecting Commission materials not routinely available for public inspection. 47 C.F.R. § 0.461.

disclosure.²⁵ The deliberative process privilege covers "all recommendations, draft documents, proposals, suggestions and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency," as well as documents which would "inaccurately reflect or prematurely disclose the views of the agency."²⁶ The privilege prevents public confusion that might be caused by disclosure of reasons and rationales that were not ultimately the grounds for the agency's action.²⁷ The privilege also is intended, *inter alia*, to encourage frank discussions within the government and guarantee that the government will be judged on positions actually adopted rather than on factors considered in reaching such positions.²⁸ We find that information on other input values that staff may use in the platform fits squarely within the scope of the deliberative process privilege embodied within Exemption 5 and codified in section 0.457 of the Commission's rules, and is therefore exempt from mandatory disclosure. This information is predecisional and deliberative material whose disclosure could threaten the government's consultative process in the specific ways discussed in *Jordan*.

9. With particular regard to the customer location input values, GTE asserts that a "fundamental flaw of the FCC Model is that it does not contain any actual customer location data, which [are] required in order to run the Model and analyze its results," and asks that such data be disclosed.²⁹ As with other inputs, it is not necessary to know the geocoded customer location data set that will ultimately be used in the model in order to evaluate the model platform. As discussed above, an analysis of the model platform's logic can be conducted through studying the model source code and the documentation of the model's algorithms. This analysis can be supplemented by running the model using any properly formatted geocoded data source. GTE could obtain test data from a number of sources. The Commission has made data for the state of Maryland available on the Commission's website for testing purposes.³⁰ Moreover, carriers such as GTE could easily create geocoded customer location data by running their customer billing address list through widely available software programs that convert addresses to geocodes. The BCPM sponsors have also recently made

²⁵ *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, n.1 (1975); *Maricopa Audubon Society v. United States Forest Service*, 108 F.3d 1089, 1092-93 (9th Cir. 1997).

²⁶ *National Wildlife Federation v. United States Forest Service*, 861 F.2d 1114, 1118-19 (9th Cir. 1988), quoting *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

²⁷ *Russell v. Department of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982); *Jordan v. Department of Justice*, 591 F.2d 753, 772-73 (D.C. Cir. 1978) (*en banc*).

²⁸ *Jordan*, 591 F.2d at 772-73.

²⁹ Motion at 6, request 1(a); Motion at 8, request 23.

³⁰ *Synthesis Platform Public Notice* at 6.

surrogate geocode data available, which could be used for testing the model.³¹ In addition, PNR's geocode data were submitted to the Commission pursuant to the Commission's *Protective Order*, and are available for inspection pursuant to the terms of the *Protective Order*.³² PNR has submitted a letter stating that it will make two geocoded data sets -- one surrogate and the other actual³³ -- available by mail for only the cost of shipping.³⁴ For these reasons, we conclude that GTE has not made a persuasive showing for the disclosure of this data pursuant to section 0.461 of the Commission's rules.

10. GTE also argues, however, that, "[o]nce determined to be a viable and appropriate source, [customer location data] files should not be considered or treated as user adjustable inputs."³⁵ GTE bases its argument on "the fact that the th[ese] data and the customer location module were a preprocessing part of the HAI platform," and that this was "an accepted fact in the discussions and litigation on how the HAI model used the geocoded data."³⁶ In sum, GTE states that the "geocoded data, as utilized by the FCC model, is in fact a preprocessing step and not a user-adjustable input value." This is simply incorrect. The Commission did not select the HAI customer location and outside plant modules, however, for use in the federal platform. In the customer location and outside plant design modules selected for the federal platform, which are based on the Hybrid Cost Proxy Model (HCPM) modules, the customer location data source is a user-supplied variable -- i.e., an input value.

³¹ Letter from Pete Sywenki, Sprint, to Magalie Roman Salas, FCC, CC Docket Nos. 96-45 and 97-160, dated Dec. 11, 1998.

³² See Letters from Christine Antis, PNR and Associates, to Magalie Roman Salas, FCC, CC Docket Nos. 96-45 and 97-160, dated Sept. 2, 9, and 10, 1998, stating that geocoded customer location data were being sent to Common Carrier Bureau staff "pursuant to Protective Order DA 98-1490." Under the terms of the *Protective Order* and the Commission's own rules, we are not permitted to disclose any information that has been submitted pursuant to the *Protective Order* except under the terms specified therein. See 47 C.F.R. § 0.457(d); *Protective Order* at paras. 3(c), 7. If GTE believes that PNR is not making the geocoded data properly available, GTE should bring the matter to the attention of the Commission staff pursuant to the dispute resolution provisions of the *Protective Order*. *Protective Order* at para. 17.

³³ As noted in the *Platform Order*, even an "actual" geocode data set will contain some surrogate points. See *Platform Order* at paras. 36-41.

³⁴ Letter from William M. Newman, PNR to Magalie Roman Salas, FCC, dated December 17, 1998. PNR states that the actual geocode data set will be released in the form of the ".bin" files that are the intermediate output of the clustering routine in the federal platform, and would allow parties to test all parts of the model except for the clustering routine itself. The surrogate data set that PNR is making available will be in the form of geocode points, and therefore will allow parties to test all aspects of the platform, including the clustering routine.

³⁵ Motion, Murphy affidavit at para. 6.

³⁶ Motion, Murphy affidavit at para. 6.

Indeed, the geocoded data were in fact used in a proprietary preprocessing module separate from the HAI model. Even in HAI, the preprocessing module used the geocoded data as input values, and not as part of the module's algorithms or logic.³⁷ Thus, the geocoded customer location data are appropriately considered an input data set.

11. Finally, GTE attempts to argue that the Commission has adopted geocode data from a particular vendor, PNR, as the data to be used in the platform of the federal mechanism, and argues that such data should therefore be disclosed.³⁸ This too is simply incorrect. As the Commission stated in the *Platform Order*, the "conclusion that the model should use geocode data . . . is not a determination of accuracy or reliability of any particular source of that data. Although PNR's geocode data are the only data that have been discussed at great length in the record in this proceeding, as the Commission and the Common Carrier Bureau have repeatedly stated, the Commission anticipates carefully considering this issue in the proceeding to select the input values for the federal model.

III. OUTPUT FILES

12. GTE requests output reports using various sets of inputs for the 28 states in which GTE operates, intermediate outputs in the model, and various forms of analysis, such as spreadsheets and charts, including comparisons of HCPM, BCPM and HAI.³⁹ GTE argues that, in the absence of this information, GTE and other interested parties are deprived of a meaningful opportunity to review the platform selected and the data, methodology, and inputs on which the Commission relied or considered in making its determination.⁴⁰ GTE claims that it is arbitrary and capricious for the Commission to fail to consider all relevant factors by using "critical, yet unpublished, data to reach its conclusions"⁴¹

13. To the extent these materials exist, they represent internal work papers and memoranda of individual Commission staff members, and therefore are part of the Commission's deliberative process, and thus not available for public inspection pursuant to

³⁷ GTE's consultant's own language belies the fact that the geocoded data are input values, not a platform element. He states that "the geocoded data *and HAI's use of them* was in fact part of a proprietary preprocessing module" *Id.* (emphasis added). Indeed, the preprocessing module *uses* the geocoded data -- input values -- to generate intermediate outputs that are passed to other model modules.

³⁸ See, e.g., Motion, Murphy affidavit at para. 7.

³⁹ Motion at 6-8, requests 1(d), 2 - 4, 22.

⁴⁰ Motion at 1.

⁴¹ Motion at 4 (*quoting National Black Media Coalition*, 791 F.2d at 1024).

Exemption 5 to the FOIA and section 0.457 of the Commission's rules.⁴² Disclosure of such materials would reveal aspects of the Commission's deliberative process, providing insight into the thought processes of Commission staff members involved in the preparation of the *Platform Order*, the determination of input values for the model, and other related issues pending before the Commission. Further, the disclosure of this type of internal work product could have a chilling effect on internal Commission staff discussions.⁴³ Under these circumstances, we find that disclosure of the requested materials is not appropriate.

14. We conclude that these output reports and other materials were not relied upon in the Commission's conclusions in the *Platform Order* or necessary for GTE or other parties to formulate petitions for reconsideration, and therefore need not be disclosed under the caselaw cited by GTE even though they are, as discussed above, exempt from disclosure under FOIA. As discussed above with respect to input values,⁴⁴ however, the Commission did not rely on any particular model runs or results in reaching its conclusions in the *Platform Order*. Instead, the conclusions in the *Platform Order* were reached based on a number of factors discussed therein, primarily an analysis of the platforms' algorithms and logic. Thus, the Commission's decisions in the *Platform Order* are not rendered arbitrary and capricious by the unavailability to the public of these internal Commission work papers.

IV. DOCUMENTATION DESCRIBING THE SYNTHESIS PLATFORM

15. GTE requests documentation describing various aspects of the model including the interface, algorithms, sequential flow of the algorithms, and the source code.⁴⁵

16. A complete description of the model methodology is provided by Commission staff in a Report available on the Commission's website (http://www.fcc.gov/Bureaus/Common_Carrier/Other/hcpm). The Report includes a detailed discussion of the HCPM model including the design objectives, customer location module, clustering algorithms, loop design algorithms, distribution plant design, feeder plant design, and operation of the HCPM interface. In addition, the Report contains a list of technical references relied on by the model proponents. Another document that will be posted on the website (history.doc) will contain the design history of HCPM including modifications to version 2.6, the latest public release. The Appendix to the Report contains a list of engineering assumptions used in the model logic. The Report was last updated on December 4, 1998.

⁴² 47 C.F.R. § 0.457. See *supra* para. 8 for a discussion of the prohibition against disclosure of information related to the Commission's internal deliberative process.

⁴³ See *Jordan*, 591 F.2d at 772 -73. See also *supra* para. 8.

⁴⁴ See *supra* section II.

⁴⁵ Motion at 6-7. requests 5, 6, 14, 15.

17. The Commission's website also contains the HCPM/HAI Interface for a Cost Proxy Model Synthesis: A User Manual. The user manual describes how the interface works and gives complete step by step instructions for both novice and experienced users. Documentation for other components of the model platform developed by HAI are also available on the record of this proceeding.⁴⁶

18. In addition to the Report and Interface User Manual, the Commission's website contains the current source code for all HCPM modules. The source code for the HAI modules is available on the public record.⁴⁷ In a Public Notice released on December 15, 1998, the Commission established a procedure whereby the model documentation will be updated on the first and third Tuesday of each month, as necessary.⁴⁸ Commission staff have also met with and will continue to be available to meet with interested parties to clarify any uncertainty regarding the model documentation.

19. GTE also requests all documentation "relied on, created, authored, electronically produced, or otherwise used by the FCC or FCC staff in the development of the model."⁴⁹ As noted above, the Report available on the Commission's website includes a list of references utilized by the HCPM model proponents. In addition, the *Platform Order* provides citations to many sources of information relied on in the development of the cost model including publicly filed comments, model documentation, and *ex parte* submissions. As discussed in greater detail above, except for the information already available to the public, we deny GTE's request for the above-referenced information on the basis that the information is privileged, and therefore not available for public inspection pursuant to section 0.457 of the Commission's rules.⁵⁰

V. DESIGN AND ENGINEERING GUIDELINES

20. GTE requests all design and engineering guidelines or assumptions relied upon,

⁴⁶ See Letter from Richard N. Clarke, AT&T, to Magalie Roman Salas, FCC, dated February 3, 1998 (HAI Feb. 3 submission).

⁴⁷ See, e.g., HAI Feb. 3 submission, Appendix E; Letter from Chris Frentrup, MCI, to Magalie Roman Salas, FCC, dated September 14, 1998; Letter from Chris Frentrup, MCI, to Magalie Roman Salas, FCC, dated September 15, 1998; Letter from Michael Lieberman, AT&T, to Magalie Roman Salas, FCC, dated September 18, 1998.

⁴⁸ *Common Carrier To Post Modifications To The Forward-Looking Economic Cost Model For Universal Service Support On The Internet*, Public Notice, CC Docket Nos. 96-45, 97-160, DA 98-2533 (rel. Dec. 15, 1998).

⁴⁹ Motion at 6.

⁵⁰ See 47 C.F.R. § 0.457.

or considered and not relied upon, as the basis of the federal model platform, and a detailed description of why each guideline or assumption was or was not relied upon.⁵¹ GTE also requests any guidelines the Commission relied upon in selecting 18,000 feet as the maximum copper loop length for the network that the model assumes and supporting the use of T-1 on copper as a loop technology.⁵² In explaining the selection of the model platform in the *Platform Order*, the Commission provided its rationale for choosing the components it selected, including references to engineering documentation upon which it relied.⁵³ The decisions were made after ample opportunity for public comment and in light of all comments received. We conclude generally that the *Platform Order* stands on its merits in this regard. As noted above, the Appendix to the HCPM Report available on the Commission's website contains a list of engineering assumptions used in the model logic. We conclude that GTE's request for guidelines or assumptions considered and not relied upon is barred by the deliberative process exemption in the Commission's rules.⁵⁴

21. GTE also requests "documentation that supports or tends to support the position that the use of T1 technology on copper facilities is a forward-looking technology" and other documents related to the model's use of this technology.⁵⁵ We note that the model platform's ability to consider whether T1 technology is more cost-effective than other, alternative technologies does not represent a conclusion that T1 technology would necessarily be used in a forward-looking network under any particular circumstances. The Commission intends to study this issue further in the inputs phase of this proceeding and resolve this issue by appropriately setting the cost input values for T1 technology. Thus, the Commission has not yet relied upon any material or studies to take any position on whether T1 technology on copper facilities is forward-looking. Therefore, the Commission does not possess any such materials except to the extent they exist as part of the Commission's current and ongoing deliberative process, which may not be disclosed to outside parties pursuant to section 0.457 of the Commission's Rules.⁵⁶

22. GTE requests documents relating to the model's use of HDSL and the

⁵¹ Motion at 6-7, requests 7-12, 17.

⁵² *Id.*

⁵³ See, e.g., *Platform Order* at para. 70. See also generally *Platform Order*.

⁵⁴ 47 C.F.R. § 0.457(e). By definition, these materials did not form a basis for the Commission's decision in the *Platform Order* and therefore are not required to be disclosed by the caselaw cited in GTE's motion.

⁵⁵ Motion at 7-8, requests 13, 17-21.

⁵⁶ 47 C.F.R. § 0.457.

calculation of terminal equipment costs.⁵⁷ As noted above, many sources of information including publicly filed comments, model documentation, and *ex parte* submissions have been placed on the public record in this proceeding. With regard to the use of HDSL, PairGain Technologies has filed an *ex parte* submission that documents the capabilities of current HDSL technologies.⁵⁸

23. GTE requests confirmation as to whether HDSL technology is used in the design and development of costs for T-1 technology in the model. In addition, GTE asks where in the model terminal equipment costs are calculated.⁵⁹ The model platform is designed to be flexible in providing decisionmakers an opportunity to review the use of various technologies. The model is capable of using either traditional T-1 repeater technology or HDSL. The relevant costs of terminal equipment and repeaters are contained in the input tables in the HCPM Report.⁶⁰ The Commission intends to study this issue further in the inputs phase of this proceeding and resolve this issue at that time. We emphasize that input values contained in the HCPM Report are not final and may be influenced by the selected technology.

24. GTE requests documentation or data that support the use of the same annual charge factor for T-1 and fiber DLC terminals.⁶¹ The model platform does not assume that the same annual charge factor should be used for T-1 and fiber DLC terminals. The input table for these values allows separate user inputs for the two terminal types.⁶² As a result, no such documentation is available.

25. GTE requests identification of how the remote provisioning and remote maintenance capabilities of fiber DLC is accounted for in the model.⁶³ This issue has not yet been resolved. On December 10, 1998 the Bureau held a public workshop designed in part to address input values relating to plant specific maintenance factors and welcomed parties to provide further comment and data on these issues. GTE and other interested parties are encouraged to provide comments and data for the resolution of the issue raised in its Motion.

⁵⁷ Motion at 8, request 18.

⁵⁸ Letter from Perry S. Lindberg, PairGain, to William Caton, FCC, dated September 23, 1997.

⁵⁹ Motion at 8, request 19.

⁶⁰ See HCPM Report, Table 15.

⁶¹ Motion at 8, request 20.

⁶² See HCPM Report, Table 17.

⁶³ Motion at 8, request 21.

VI. LIST OF CHANGES TO THE MODEL

26. GTE requests a detailed description of any changes made to "the Model" between October 15, 1998 and the present.⁶⁴ As noted above, the *Platform Order* adopted a synthesis of the best features of the three models on the record on October 28, 1998.⁶⁵ We therefore presume that GTE is referring to the changes that may have been made by the model proponents or Commission staff to the model components that were adopted in the *Platform Order*. Any changes to the industry-sponsored model components, HAI and BCPM, have been filed on the public record in this proceeding and are therefore available to GTE. No fundamental changes in the HCPM logic have been made since the public release of HCPM version 2.6, which was made available on July 20, 1998.

27. Since the adoption of the *Platform Order* and as contemplated therein, Commission staff and interested parties have continued to review the platform to ensure that it operates as described in the *Platform Order*.⁶⁶ As a result, minor refinements have been made. The Commission's website (http://www.fcc.gov/Bureaus/Common_Carrier/Other/hcpm) provides a Report prepared by Commission staff that includes a list of modifications made to HCPM since the last public release on July 20, 1998. Another document that will be posted on the website (*history.doc*) will contain a detailed description of the modifications made to version 2.6. In addition, the Commission has recently released a *Public Notice* establishing a more detailed procedure to ensure that parties are informed of changes to the federal synthesis platform and have access to the most current version of the platform on the Commission's website.⁶⁷ Pursuant to the guidelines set forth in the *Public Notice*, the Commission's website will provide the current version of that platform and a brief summary of modifications to the platform that will be updated on the first and third Tuesday of each month, as necessary. Commission staff have also met with and will continue to be available to discuss any modification of the cost model with interested parties.

VII. REQUEST FOR EXTENSION OF TIME

28. GTE requests that the date for filing petitions for reconsideration be extended

⁶⁴ Motion at 7, request 16.

⁶⁵ *Platform Order* at para. 3.

⁶⁶ *Platform Order* at para. 13.

⁶⁷ *Common Carrier Bureau To Post Modifications To The Forward-Looking Economic Cost Model For Universal Service Support On The Internet*, Public Notice, CC Docket Nos. 96-45, 97-160, DA 98-2533 (rel. Dec. 15, 1998) (*Public Notice*).

20 days from the date on which the Commission produces the requested data and information.⁶⁸ The deadline for filing petitions for reconsideration of Commission decisions is established by statute,⁶⁹ however, and therefore cannot be waived. If GTE wishes to file a supplement to any petition that it may file for reconsideration of the *Platform Order*, it should indicate as early as possible its intention to seek leave from the Commission to supplement its timely filed petition.⁷⁰

VIII. ORDERING CLAUSES

29. Accordingly, IT IS ORDERED, pursuant to 5 U.S.C. section 552(b) and 47 C.F.R. section 0.457, that GTE's request for disclosure of documents pursuant to the Freedom of Information Act IS GRANTED to the extent indicated herein and otherwise IS DENIED.

30. IT IS FURTHER ORDERED, pursuant to 47 U.S.C. section 154(i), that GTE's request for disclosure of documents in its Emergency Motion for Disclosure of Data and Information to Permit Public Review and Extension of Time IS GRANTED to the extent indicated herein and otherwise IS DENIED.

31. IT IS FURTHER ORDERED, pursuant to 47 U.S.C. section 405, that GTE's request for extension of the deadline to file petitions for reconsideration of the *Platform Order* IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



James D. Schlichting
Deputy Chief, Common Carrier Bureau

⁶⁸ Motion at 8.

⁶⁹ 47 U.S.C. § 405.

⁷⁰ Pursuant to our rules, "no supplement to a petition for reconsideration filed after the expiration of the 30 day period will be considered, except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement." 47 C.F.R. § 1.429(d). See also *In the Matter of Dismissal of All Pending Pioneer's Preference Requests*, FCC 98-71, 13 FCC Rcd 11485 (1998).

December 17, 1998

**STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

Re: Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for high Cost Support for Non-Rural LECs ; (CC Docket Nos. 96-45, 97-160) .

Today, the Common Carrier Bureau releases an Order denying GTE's Emergency Motion for Disclosure of Data and Information to Permit Public Review and Extension of Time. I object to the denial of GTE's reasonable request that this agency provide all information necessary to allow outside parties to fully evaluate the model platform that we have already selected. Without such information, it is impossible for GTE to determine whether or not the model that the Commission has selected is operating consistent with the findings and conclusions contained in the Commission's Order.

I have repeatedly objected to the Commission's adoption of any federal model. I agree with GTE's conclusion that "the Model platform is inherently ill-suited to estimate accurately the costs of an efficient local exchange carrier to provide universal service."¹ In addition, however, I have repeatedly objected to the adoption of a "black box" distribution scheme that is not transparent to all concerned parties. Such a process will lead to complete control of universal service distribution at a federal agency with little or no recourse to outside parties wanting to challenge those decisions.

It is inequitable to refuse to make available the complete federal model platform that this agency has already adopted. While I appreciate that the components may be available on the website, that is not a sufficient substitute for making the model fully available to all parties who are interested. Requiring parties to reconstruct the models from its various components is not just burdensome, it may also result in unanticipated variations. Why should be it be GTE's responsibility to re-invent the Commission's "public" model? I fail to see why the Commission has failed to make at least the platform -- if not the default geocode data and a standard set of inputs that can be run on all of the models -- available to the public. Moreover, why can't we provide some sample runs of how this model will work on a state by state basis with the common inputs that the Commission used to evaluate the two submitted models last spring? Indeed, I would like the same information myself!

In addition, GTE asserts that "documentation has not been provided that fully explains the engineering assumptions and standards that are the basis of the FCC model."² As an economist, I have spent much of my professional life building and evaluating economic

¹ Emergency Motion of GTE for Disclosure of Data and Information to Permit Public Review and Extension of Time at 2-3.

² Emergency Motion of GTE for Disclosure of Data and Information to Permit Public Review and Extension of Time, Affidavit par. 9.

models. Without such information, I agree that it would be difficult if not impossible to determine whether the model complies with engineering design standards. Similarly, the failure to explain how the modules interface would make it impossible to assess whether the assumptions and algorithms are consistent from module to module.³ In light of these concerns, why has the Bureau failed to make the entire model platform fully available? Indeed, I believe that we must make it available.

As I have indicated previously, the regulation of markets through models is inherently inequitable. If no one outside the agency fully understands the model, then there is no easy way to appeal the model results. Few people understand how any model works; fewer still understand complex models; no one really understand models that produce no results. Models entail a certain degree of opaqueness in contrast to the transparency of markets and market outcomes, or even in contrast to simpler rules based on accounting information or even simpler information.

This opaqueness leads to inherent uncertainty and instability. The results of a model at one point in time can be arbitrarily helpful or harmful to one individual. The key word is "arbitrarily." Models can easily be changed, and often are. An apparent benefit one day can become a liability tomorrow. The net effect is unpredictability and uncertainty. No economic cost model can meet the "specific and predictable" standard required of the federal universal service support mechanisms by the Act.⁴

Regulation based on accounting rules or even simpler rules may provide -- at any moment in time -- a less accurate portrayal of a competitive market than an economic cost model *potentially* could. Simpler rules such as accounting rules, however, are far more transparent to the world, are not easily corrupted, are easily appealed, and provide a greater degree of market certainty and stability.

It is not surprising, and even predictable, that within months of adopting a model we already have parties complaining that they do not have sufficient access to information to evaluate the results and the methodology selected by the Commission. I continue to think that such a result is unfair. We should provide the model platform that we have selected and other necessary information to the world and let it be evaluated openly.

³ Emergency Motion of GTE for Disclosure of Data and Information to Permit Public Review and Extension of Time, Affidavit par. 9.

⁴ 47 USCA section 254(b)(5).